



CITY OF HOUSTON

Planning & Development
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TO: Development Impacts Subcommittee

FROM: Robert M. Litke, Director 

DATE: April 18, 2005

SUBJECT: Development Impacts Issue Paper

The following commentary is intended to help focus and facilitate discussion within the committee.

A basic duty of the Planning Commission is to consider applications for approval of subdivision plats. The procedures, rules, regulations and standards governing the subdivision of land are set out in chapter 42 of the city code of Ordinances. The authority for this activity is derived from Chapter 212 of the State Local Government Code. A critical element of this authority is that the commission **must** act within 30 days of receipt of a completed application and if the plat meets the city's requirements, it **must** be approved.

The only discretion the Planning Commission has on plat approvals is when an applicant seeks a variance from the rules. Under that circumstance, the commission can approve the variance, with or without special conditions, or disapprove the variance and approve the plat subject to meeting all standard requirements. When setting special conditions, there must be some reasonable relationship to the issue at hand.

By way of illustration: an applicant requests a variance to reduce the setback on a parcel from 25 feet to 10 feet. The variance would place the ground floor of a parking garage that much closer to pedestrians on the street. The commission grants the variance subject to a special condition that the planning director must approve a screening plan so that automobiles are not visible to pedestrians at street level. On the other hand, if there was general opposition to the development of the site for a garage, the commission could not grant the variance with a special condition that precluded the use of the site for a garage.

All development, of what ever nature, has an impact; some positive, some negative, some minimal, some substantial. In Houston, the issue of impact is dealt with in a variety of ways. Let's consider the hypothetical garage again. This time the issue is not a variance but the number of parking spaces and the impact on nearby residential neighborhoods if cars use those streets coming and going. The easiest route for drivers to take is through the neighborhood. The traffic and safety impact is borne

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by the homeowners and maybe their kids if they play in the street. If the garage is designed so that all traffic enters and exists off an already congested street, the garage users and others traveling on the street bear the burden of added congestion. In either case, assuming the garage is economically viable, the developer does not bear any of the impact burdens.

Rice Military is an older area inside the loop which has been experiencing considerable new residential development. On one relatively narrow street with a mix of old and new houses, a developer proposed to build a number of new town homes and sought a variance from the planning commission so that he would not be required to dedicate some land for future right of way widening. Neighborhood residents expressed concerns to the planning commission over the number of units and the attendant problem of added traffic on the narrow street as well as on-going problems of poor street drainage. The planning commission approved the variance with some special conditions intended to mitigate the impact of the new development on the street. The developer considered the cost implications and re-submitted a plat that did not require any variance. The plat was approved. The developer made minor modifications to his plans, dedicated the street widening and moved forward. None of the impacts on the neighborhood were addressed. There is no schedule for the city to improve the drainage or widen the street.

Measuring and addressing impacts in an equitable manner is not an easy task. In a strong property rights state, achieving a balance between individual property rights and the public interest is in constant flux. On a national level, it is far from, resolved. Exhibit A is a federal court opinion dealing with impacts. One thing is very clear, if the city is to consider impacts, there has to be a clear connection between the impact and the mitigation required, be it money or project limitations. The difficult task before the committee is to explore and define impacts, consider how to measure them and recommend who should bear the burden—the taxpayers through the city or the property owner.

attachment: Federal Court Opinion